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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

IVAN SIGMOND

Defendant.

CASE NO. 1:20-CR-00160-DAD-BAM

JOINT STATUS REPORT AND STIPULATION
REGARDING EXCLUDABLE TIME PERIODS
UNDER SPEEDY TRIAL ACT; AND ORDER

CURRENT DATE: November 23, 2020
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

STATUS REPORT

Defendant IVAN SIGMOND (“defendant”) appeared on the criminal complaint on August 31, 2020 (Doc. 3), and on September 2, 2020, was released to a third party custodian and ordered to attend the WestCare inpatient treatment program. Docs. 5–6. The defendant was arraigned on the indictment on September 14, 2020. Doc. No. 9. Initial discovery has been provided to defense counsel, David Balakian, and the government is aware of its ongoing discovery obligations. The government intends to draft a plea offer for the defendant.

STIPULATION

This case is set for status conference on November 23, 2020. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California until further notice, and allows district judges to continue all criminal matters. This and previous General Orders were entered to address public health concerns related to COVID-19.

1 Although the General Orders address the district-wide health concern, the Supreme Court has
 2 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 3 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 4 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 5 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 6 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 7 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 8 or in writing”).

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 10 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 11 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 12 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 13 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 14 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 15 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 16 and the defendant in a speedy trial.” *Id.*

17 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 18 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 19 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 20 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 21 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 22 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 23 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 24 September 11, 2001, terrorist attacks and the resultant public emergency). The coronavirus is posing a
 25 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

26 In light of the societal context created by the foregoing, this Court should consider the following
 27 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 28

justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant IVAN SIGMOND, by and through defendant’s counsel of record, David Balakian, hereby stipulate as follows:

1. By previous order, this matter was set for status on November 23, 2020.
2. By this stipulation, defendant now moves to continue the status conference until March 10, 2021, and to exclude time between November 23, 2020, and March 10, 2021, under Local Code T4.
3. While the parties anticipate that the case may resolve without a trial, this is not yet a certainty. If defendant ultimately does not enter a guilty plea and decides to proceed to trial, the parties agree and stipulate, and request that the Court find the following:
 - a) The government asserts the discovery associated with this case includes reports, photographs, and recordings; discovery has been provided to Attorney Balakian and/or made available for review.
 - b) The government will provide a plea offer to the defendant through Attorney Balakian.
 - c) Counsel for defendant desires additional time to consult with his client, to review the current charges, to conduct investigation and research related to the charges, to review and/or copy discovery for this matter, to discuss potential resolutions with his client, to prepare pretrial motions, and to otherwise prepare for trial.
 - d) Counsel for defendant believes that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
 - e) The government does not object to the continuance.
 - f) Based on the above-stated findings, the ends of justice served by continuing the

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 case as requested outweigh the interest of the public and the defendant in a trial within the
2 original date prescribed by the Speedy Trial Act.

3 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
4 et seq., within which trial must commence, the time period of November 23, 2020 to March 10,
5 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
6 T4], because it results from a continuance granted by the Court at defendant's request on the
7 basis of the Court's finding that the ends of justice served by taking such action outweigh the
8 best interest of the public and the defendant in a speedy trial.

9 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
10 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
11 must commence.

12 IT IS SO STIPULATED.

13
14 Dated: November 12, 2020

McGREGOR W. SCOTT
United States Attorney

15 /s/ JESSICA A. MASSEY
16 JESSICA A. MASSEY
Assistant United States Attorney

17
18 Dated: November 12, 2020

/s/ DAVID BALAKIAN
19 DAVID BALAKIAN Counsel
for Defendant IVAN SIGMOND

ORDER

IT IS SO ORDERED that the status conference is continued from November 23, 2020, to **March 10, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: November 12, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE